



Natural Resources Conservation Service
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January 25, 2008

UTAH BULLETIN UT190-08-01

SUBJECT: ECS - SPRING DEVELOPMENT GUIDANCE

Purpose: Utah Bulletin UT190-07-01 expired October 10, 2007. This bulletin provides updated guidance on NRCS policy requirements for Conservation Practice 574 Spring Development. The Practice Standard requires a determination that “the farmer has the appropriate water rights or permits to develop the spring.”

Background: The Corps of Engineers (Corps) recently finalized new Regional Conditions for the use of Nationwide Permits (NWP) in Utah, which will provide increased flexibility for permitting spring developments. The new Regional Condition regarding springs states “For all NWPs, when activities are proposed within 100 feet of the point of groundwater discharge of a natural spring, prospective permittees shall submit a PCN [Pre-Construction Notification] to the Sacramento District in accordance with General Condition 27. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.”

Note that this Regional Condition does not apply to activities that occur more than 100’ away from the point of groundwater discharge or activities in seeps. Such areas may still be jurisdictional waters of the U.S. subject to the Clean Water Act permit requirements if the discharge results in a defined channel. NRCS has no legal authority to make a jurisdictional determination, nor a decision regarding whether a permit is required. Such areas may also be wetlands subject to Executive Order 11990 and NRCS’ Policy on the Protection of Wetlands. If water is diverted from a spring-fed channel more than 100’ away from the groundwater point of discharge, the Utah Stream Alteration Permit process may apply.

NWPs that are most likely to be applicable to spring developments are NWP 3 – Maintenance, NWP 18 – Minor Discharges, and NWP 40 – Agricultural Activities. The full text of all NWPs may be found at: <http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/nwp.html> Links to all the Regional Conditions and the PCN Checklist are also found on the web page above.

Spring development associated with maintenance or emergency repair of a currently serviceable structure or maintenance or construction of stock ponds may be an exempted activity, if the required conditions are met. Exemption Summaries may be found at:

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/exempt.html>

Procedures: When planning a Spring Development, follow the steps below to ensure compliance with the 574 Practice Standard, NRCS Policy on the Protection of Wetlands and the Clean Water Act. Compliance with NEPA and other Federal Laws and Executive Orders shall also be documented using the UT-CPA-52 form and Help Sheets as per existing policy.

STEP 1: Determine whether the 574 practice is needed to solve one or more resource concerns, and document your finding in the Conservation Assistance Notes. If the practice is needed, go to Step 2.

STEP 2: Following the criteria in the practice standard, conduct an investigation of site conditions, including a certified wetland determination. If the spring development does not make production of a commodity crop possible on the wetland, there is no need to record the determination on the CPA-026 form, nor notify the Farm Services Agency of the determination. A Trained Wetland Delineator shall complete the documentation necessary to make a wetland determination and copies of the documentation shall be kept in the field office file. Field data sheets should include in the notes section information about previous development of the spring, current serviceability of a previously developed spring, and any surface hydrology connection of the spring to waterbodies or wetlands. Document the benchmark condition of the springhead and any adjacent wetlands, channels, swales, or water bodies with photographs. Determine whether the participant has water rights necessary to install the practice. If a wetland is present, go to Step 3. If no wetland is present, go to Step 4.

STEP 3: In accordance with NRCS' Policy on the Protection of Wetlands, http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM_190_410_B_26.htm, determine if there is an economically and technically feasible alternative that will address the resource concern and avoid adversely affecting wetlands. If so, plan that alternative. If not, document in the Conservation Assistance Notes and/or the UT-CPA-52 and incorporate minimization measures into the Conservation Plan as required by the policy. Such measures may include minimizing the amount of water diverted from the spring, locating the watering facility outside the wetland area, returning overflow from the watering facility to the wetland area, and fencing the wetland area to exclude or manage livestock grazing. Complete the Utah Wetland Habitat Model, which serves as Utah's draft interim functional assessment for wetlands. If the "After" score is equal to or greater than the "Before" score, adverse impacts have been minimized. Go to Step 4.

STEP 4: If the alternative planned will result in activity within 100 feet of the point of groundwater discharge of a natural spring, or in a wetland, the participant shall submit a PCN [Pre-Construction Notification] to the Corps. Certified Mail is recommended so that the time frames below can be documented. Upon request, provide the participant information from the case file to assist in completing the PCN.

http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/SPD-wide_NWP-PCN-checklist_web.doc

The Corps' district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. The participant shall not begin the spring development until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer's receipt of the **complete** PCN and the participant has not received written notice from the district or division engineer.

Effective: January 31, 2008

Expiration Date: January 31, 2009

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Enclosure – Spring Development Flow Chart

Distribution: E